



**Army Corps
of Engineers**
Sacramento District

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SUBJECT: Current status of SPK-RD's involvement in Bay Delta Conservation Plan

BACKGROUND:

The Bay Delta Conservation Plan (BDCP) is a Habitat Conservation Plan (HCP) being developed to promote the recovery of endangered, threatened and sensitive fish and wildlife species and their habitats in the Sacramento-San Joaquin Delta in a way that will also restore water exports to amounts at or above those prior to the collapse of Delta fisheries. BDCP is a very controversial program that was reformulated from a previous project called the "Peripheral Canal" that was solely intended for water supply.

The BDCP would provide "take" approval under the state and federal Endangered Species Acts for the construction and operation of a new conveyance facility, and the operations of the State Water Project and the Central Valley Project (collectively known as Conservation Measure 1).

The BDCP development work is being lead by the California Department of Water Resources (DWR), State Water Contractors, and their consultants, with considerable involvement by the Department of the Interior, the Bureau of Reclamation (BOR), the US Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS). The SPK and the Environmental Protection Agency (EPA) are NEPA cooperating agencies.

The Corps has jurisdiction over BDCP-related actions under Section 404 of the Clean Water Act and Sections 10 and 14 of the Rivers and Harbors Act of 1899. Because the Corps jurisdiction and scope is not the entire BDCP program, the Corps will not make one permit decision on the BDCP as a whole. Many of the individual actions which make up the BDCP will however require Corps approval.

CURRENT STATUS:

Bay Delta Conservation Plan (SPK-2008-00861)

- Department of the Army Jurisdiction
 - ✓ Subject to regulation under Section 10 and 14 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act
 - ✓ An application for a Department of the Army Permit has not been received.
- NEPA Compliance Status/Schedule
 - ✓ Lead Federal Agencies: USFWS, NMFS, BOR
 - ✓ Notice of Intent Published by USFWS and NMFS on 24 January 2008
 - ✓ Notice of Intent Published by BOR on 15 April 2008
 - ✓ Scoping process ended 30 May 2008
 - ✓ SPK accepted Cooperating Agency Status on 24 Nov 2008
 - ✓ Administrative Draft EIS for SPK review anticipated in February 2013
 - ✓ Public Draft EIS anticipated in May 2013
- SPK-RD Current Involvement

- ✓ Meeting every two weeks with key members of the Department of Interior, USFWS, NMFS, BOR, EPA, and Department of Agriculture
- ✓ Meeting every two weeks with DWR concerning Conservation Measure 1: the proposed new intakes, tunnels and operations of the State Water Project (SWP)
- ✓ Meeting every two months with DWR, BOR, NMFS, USFWS, and other agencies concerning habitat restoration projects which are part of or related to the BDCP
- ✓ Signed a Memorandum of Agreement with DWR under the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541) as amended. Funding from DWR supports ½ FTE at SPK-RD

Other Projects Closely Related to the BDCP:

Coordinated Long Term Operations of the Central Valley Project (CVP) and the SWP (SPK-2012-00686)

- This concerns the operation of the existing water projects, which in turn would influence water project operations permitted by the BDCP
- Department of the Army Jurisdiction
 - ✓ Subject to regulation under Section 10 of the Rivers and Harbors Act of 1899
 - ✓ An application for a Department of the Army Permit has not been received.
- NEPA Compliance Status/Schedule
 - ✓ Lead Federal Agency: BOR
 - ✓ Notice of Intent Published by BOR on 28 March 2012
 - ✓ Scoping process ended 28 June 2012
 - ✓ SPK accepted Cooperating Agency Status on 9 July 2012
- SPK-RD Current Involvement
 - ✓ None

Yolo Bypass Salmonid Habitat Restoration and Fish Passage

- This project would create fish habitat required both the BDCP and by the Coordinated Long Term Operations of the CVP and the SWP
- Department of the Army Jurisdiction
 - ✓ Subject to regulation under Section 10 and 14 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act
 - ✓ An application for a Department of the Army Permit has not been received.
- NEPA Compliance Status/Schedule
 - ✓ Lead Federal Agency: BOR
 - ✓ Notice of Intent anticipated in February 2013
 - ✓ Invitation for SPK to be a Cooperating Agency anticipated in February 2013
- SPK-RD Current Involvement
 - ✓ None

Prospect Island Tidal Restoration Project (SPK-2013-00085)

- This project would create fish habitat required both the BDCP and by the Coordinated Long Term Operations of the CVP and the SWP
- Department of the Army Jurisdiction
 - ✓ Subject to regulation under Section 10 and 14 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act
 - ✓ An application for a Department of the Army Permit has not been received, but anticipated in February 2013.
- NEPA Compliance Status/Schedule

- ✓ Lead Federal Agency: Anticipated to be SPK
- ✓ Notice of Intent anticipated in February 2013
- SPK-RD Current Involvement
 - ✓ Meeting every month with DWR, NMFS, USFWS, and other agencies

CONGRESSIONAL INTEREST:

While all or nearly all of California's Congressional delegation have publically expressed an opinion over the BDCP, only Congresswoman Doris Matsui (D-CA) has directly contacted SPK. She expressed interest and concern to SPK Con-Ops (Randy Olsen) regarding flood risks of the proposed conversion of the Yolo Bypass into salmon and sturgeon habitat for both up migrating adults and down migrating juveniles.

NEXT STEPS:

- SPK staff continues to maintain a continuing and ongoing involvement in the BDCP process at all levels, take a leadership role in defining and communicating USACE issues to the BDCP proponents, and work with all other parties to seek a way forward to provide important technical assistance and timely regulatory processes.
- DWR is working on countless BDCP issues concurrently. SPK permitting actions occur further down the BDCP approval process. Additionally, much of the site specific information remains undeveloped, and much of what has been developed is still subject of negotiation or legal action. As such, SPK cannot say for certain that we do or do not have permitting issues with the proposed construction of new water intakes, a new water conveyance pipeline or canal, and new operations of the State and Federal water projects.